

Alan A. Rudnick  
Assistant General Solicitor

11915

RECORDATION NO. 11915 Filed 1425

JUN 18 1980 - 10 45 AM

 **Chessie System**

June 17, 1980

INTERSTATE COMMERCE COMMISSION

Law Department  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
216 623-2471

Ms. Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Attention: Mrs. M. R. Lee, Room 2303  
Recordation Unit

Date JUN 18 1980

Fee \$ 50.00

ICS Washington, D. C.

RECEIVED  
JUN 18 10 40 AM '80  
T.S.B.  
FEE OPERATION BR.

Dear Ms. Mergenovich:

Enclosed are executed counterparts Nos. 1 through 3 (of 5) of an Agreement dated as of June 1, 1980, between Fruit Growers Express Company, P. O. Box 28598, Washington, D. C. 20005 (as Bailor) and The Baltimore and Ohio Railroad Company, P.O. Box 6419, Cleveland, Ohio 44101 (as Bailee).

The equipment covered by the above documents consists of:

- 94 All Steel Bay Window Cabooses. Bailee's road numbers 904000 -904093, inclusive with AAR Mechanical Designation NE

The above equipment will be lettered "Chessie System", "B&O", or in some other appropriate manner, and will also be marked:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION".

Also enclosed is a remittance in the amount of \$50 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 USC Sec. 11303 (formerly Sec. 20c of the Interstate Commerce Act), as currently administered, you are hereby requested to file one of the enclosed counterparts for record in your office and to return the remaining copies to me at my above address.

Thank you in advance for your cooperation.

Sincerely,



AAR:aj  
Enclosures



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

*Counterparts - Eva Korompay*

June 18, 1980

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Alan A. Rudnick  
Assistant General Solicitor  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/18/80 at 10:45 am, and assigned re-recording number(s). 11915

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

RECORDATION NO. 11915  
Filed 1425

JUN 18 1980 - 10 45 AM

INTERSTATE COMMERCE COMMISSION

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AGREEMENT

Dated as of June 1, 1980

between

FRUIT GROWERS EXPRESS COMPANY

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

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Covering

94 All Steel Bay Window Cabooses

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THIS AGREEMENT, dated as of June 1, 1980, by and between FRUIT GROWERS EXPRESS COMPANY, a Virginia corporation ("Manufacturer"), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation ("B&O"):

W I T N E S S E T H :

The Manufacturer and B&O entered into a Purchase Agreement, dated on or about October 6, 1978, as amended and modified by various correspondence and by such agreements as have been made or may be made between the parties (which Purchase Agreement, as amended and modified, whether now or in the future, is made a part hereof by reference) whereunder the Manufacturer agreed to construct and deliver to B&O, and B&O agreed to accept and pay for, the following railroad equipment ("Equipment"):

94        All Steel Bay Window Cabooses,  
          to bear B&O's road numbers  
          904000-904093, inclusive.

Delivery of the Equipment by the Manufacturer to B&O is scheduled to begin in June, 1980. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to a Equipment Trust Agreement, or otherwise), it is not in position to accept delivery of and pay for the Equipment under the terms of the Purchase Agreement at this time. B&O represents that such financing arrangements will be consummated, however, on or before September 1, 1980. B&O (in order that it may use the Equipment pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Equipment on their completion, solely as a bailee of the Equipment, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O and B&O hereby accepts from the Manufacturer the Equipment as of the date each of them is delivered to B&O at Potomac Yards, Alexandria, Virginia, or such other place as may be specified by B&O, for the period ending on the earlier of September 1, 1980, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any part concerned.

Title to the Equipment shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation pursuant to 49 USC Sec. 11303. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Equipment.

B&O agrees that it will permit no liens of any kind to attach to the Equipment, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Equipment or the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Equipment by B&O during the term of this Agreement.

B&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Equipment in good order and running condition and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those units of Equipment which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each unit of Equipment to B&O under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each unit of Equipment, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION.

B&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Equipment.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any unit of Equipment, B&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Equipment as provided in the Purchase Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the Manufacturing Agreement relating to the Equipment. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and B&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to B&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder

which can be and are so assigned, shall not be subject to any defense, set-off, counter-claim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Equipment, not subject to any defense, set-off, counter-claim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by B&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the cars, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take, and pay for the Equipment in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Manufacturing Agreement.

FRUIT GROWERS EXPRESS COMPANY

By   
Vice President

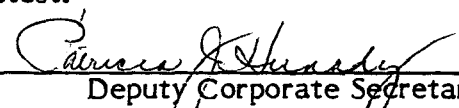
(Corporate Seal)

Attest:  
  
Assistant Secretary

THE BALTIMORE AND OHIO RAILROAD  
COMPANY

By   
Assistant Vice President  
and Treasurer

(Corporate Seal)

Attest:  
  
Deputy Corporate Secretary

CITY OF WASHINGTON       )  
                                  ) SS:  
DISTRICT OF COLUMBIA    )


On this ~~13<sup>th</sup>~~ <sup>June</sup> day of ~~May~~, 1980, before me personally appeared ~~WADALL~~ to me personally known, who, being by me duly sworn, says that he is Vice President of FRUIT GROWERS EXPRESS COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

STATE OF OHIO               )  
                                  ) SS:  
COUNTY OF CUYAHOGA      )

On this ~~27<sup>th</sup>~~ day of May, 1980, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn says that he is Assistant Vice President of THE BALTIMORE AND OHIO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)



Notary Public

L. W. MOFFETT, Notary Public  
City of Washington, District of Columbia  
My Commission Expires October 14, 1982



Notary Public, State of Ohio, Cuyahoga County  
My Commission Expires April 21, 1984